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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YUKIO SAWAJIRI, HIROYUKI SAKAGAMI,
and MIKI OGINO

Appeal 2007-2479
Application 10/032,326
Technology Center 3600

Oral Hearing Held: August 12, 2008

Before WILLIAM F. PATE, III, JENNIFER D. BAHR, and JOSEPH A. FISCHETTI, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

NORMAN J. LATKER, ESQUIRE
Browdy & Neimark, P.L.L.C.
624 Ninth Street, NW
Suite 300
Washington, DC 20001-5303

The above-entitled matter came on for hearing on Tuesday, August 12, 2008, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, 9th Floor, Hearing Room A, Alexandria, Virginia, before Lori B. Allen, Notary Public.

PROCEEDINGS

JUDGE PATE: This is a hearing conducted pursuant to 37 CFR 41.47, in Hearing Room A, on August 12, 2008, at one o'clock. Judge Pate is presiding, and the other judges are Judge Fischetti and Judge Bahr. We're going to go off the record.

(Off the Record.)

JUDGE PATE: Just step up to the podium there, sir, and make yourself comfortable.

MR. LATKER: Thank you for giving me your time today.

JUDGE PATE: Sure.

MR. LATKER: I'm Norm Latker.

JUDGE PATE: We've had a chance to look at this case beforehand and think we're up to speed on the issues, and so we're ready to hear your arguments about patentability.

MR. LATKER: Okay. First, the applicant submits that none of the three cited patents, either alone or in combination, teach first and second straight-leg parts, which are 15 and 16 in the patent, of a striker parallel to each other with a front end of each connected together by a front connecting part 17; wherein the first straight-leg part has a front-side portion having a latch engaging part 32, engageable in a recess of a door latch 18, and a rear-side portion having a diameter 20 larger than that of the engaging part 32 of the front-side portion; wherein the rear-side portion is spaced apart from the plane of rotation of the latch 18; where in which plane the latch rotates to engage latch engaging part 32.

Clearly, both Ichinose and Hamada, which are assigned patents to the applicant, have all the structural features previously noted, with the exception of the claimed rear-side portion having a diameter larger than the diameter of a latch engaging part of a front-side portion which engages the latch.

JUDGE PATE: What's the purpose of making that part of the leg larger?

MR. LATKER: Pardon?

JUDGE PATE: What's the purpose of making that part of the leg larger?

1 MR. LATKER: To use it on heavier-duty automobiles that require a
2 stronger striker than you would normally find in an automobile.

3 JUDGE PATE: Okay. Thank you.

4 MR. LATKER: Only the British patent to Mark may be argued to
5 have both a front-side portion and a rear-side portion larger than that of the
6 front-side portion. However, even conceding this, there is no teaching
7 whatever in Mark of a front-side portion -- and that's the one with the
8 smaller diameter -- being engageable by the Mark latch. The Mark latch is
9 indicated to be engageable only with engageable portion 22, which is
10 equivalent only to the claim front connecting part 17, which is the portion
11 that is parallel to the plate of the striker.

12 JUDGE PATE: Does that even matter?

13 MR. LATKER: Pardon?

14 JUDGE PATE: Does it even matter what part of the striker is
15 engaged?

16 MR. LATKER: Well, yes, from our point of view.

17 JUDGE PATE: Well, your claim is directed to a striker, per se. It
18 says in the preamble it's directed to a striker.

19 MR. LATKER: Yes.

20 JUDGE PATE: So if I have a striker that you say --

21 MR. LATKER: No, I think that the latch is positively claimed, and
22 the plane of its rotation is claimed in the claim.

23 JUDGE PATE: Yes, it's in the body of the claim, but the claim is
24 directed to a striker. If the claim is directed to a striker, I don't care what
25 latches that's going to engage it. What you're patenting is a U-shaped piece
26 of metal with a base on it.

27 MR. LATKER: Well, I don't agree with that, on the basis of the
28 positive recitation of the latch in the claim.

29 JUDGE PATE: That's just another structure that the striker is going
30 to be used with.

31 MR. LATKER: Pardon?

32 JUDGE PATE: That's just a structure that the striker is going to be
33 used with. Let's look at the preamble at 21.

34 (Pause.)

35 MR. LATKER: Sorry. Okay, I have claim one.

1 JUDGE PATE: Okay. So your argument is that that preamble is
2 directed to a combination of a striker and a latch?

3 MR. LATKER: Well, a striker of a vehicle door latch device.

4 JUDGE PATE: Right. That part seems to indicate it's directed to a
5 striker.

6 MR. LATKER: Well, it's a door latch --

7 JUDGE PATE: Just as the second page including a latch with the
8 striker --

9 MR. LATKER: It's a door latch device.

10 JUDGE PATE: -- might argue that that makes it a combination. I
11 could understand now.

12 JUDGE PATE: Okay. Well, that was the intention and that's why
13 you have the positive recitation. We're back to discussing the Mark
14 reference.

15 JUDGE PATE: Yes, go ahead.

16 MR. LATKER: Conceding, for the purpose of the discussion, that
17 Mark teaches thickening of the legs of its striker, there's no teaching in Mark
18 of the latch striking that leg. The Mark striker is designed so that the latch
19 engages the parallel strut above the two legs.

20 Confirming that, on page 2, in the last two paragraphs of Mark, it
21 indicates this: "Loop formation 16 comprises a pair of limbs 18-20 whose
22 ends are riveted into spaced locations of base 12. The unitary loop
23 formation also includes a medium latch bolt engaging portion 22," and that's
24 the portion that's equivalent to applicant's parallel portion above the legs, "in
25 the form of a straight crossbar lying in a plane parallel to but spaced from
26 plate 12, and merging at each end a respective limb by a generally
27 right-angled bend." And I'd like you to focus on the right-angled bend.

28 "The major part of each limb 18-20 extending from its riveted
29 connection to base 12 almost to said right-angled bend is of substantially
30 greater diameter than that of portion 22, including in this example the
31 connecting bends merging with said major part." It's not exactly clear there
32 as to what the diameter of the connecting bends is. It sounds like it's
33 equivalent to the limbs, rather than the striking portion. However, Claim 8
34 implies otherwise. And Claim 8 provides at least one limb is connected to
35 the bolt engaging portion by a bent portion of the rod. The bent portion
36 being of substantially the same cross-section as the bolt engaging portion.

1 Claim 8 makes clear that the Mark latch -- which isn't shown in the
2 patent -- is limited to engagement with the latch engaging portion 22, and
3 not with the unnumbered right-angled connecting bends which are indicated
4 in the claim to have the same diameter of portion 22.

5 While the examiner may be justified in thickening the legs of either
6 Ichinose and Hamada, on the basis of Mark, the applicant submits that there
7 is no teaching whatever in Mark to thicken the legs of either Ichinose or
8 Hamada below their right-angled connecting bends so as to produce the
9 claimed latch engaging portion 32. Mark teaches only, at best, that the
10 thickening of its limbs extends up to the Mark right-angled connecting
11 bends, which are not identified as being a point able to engage the Mark
12 latch; which seems to be correct in the sense that it is a bent portion and you
13 would not normally connect a latch to a bent portion. Only bolt-engaging
14 portion 22 is identified to serve that purpose.

15 The applicant further submits that even if it is agreed that Mark
16 teaches engaging portion -- it's not 22; it's 32 -- the resulting structure still
17 does not result in the claimed invention, for the reasons that applicant set out
18 in its December 4, '06 reply brief. In the reply brief we indicated, even
19 assuming that the examiner suggested prior art combination would be
20 obvious -- which we don't admit -- the resulting structure still would not be
21 equivalent to that claimed.

22 There is no teaching whatever in the cited prior art
23 combination -- even if a rear-side portion of the first leg of 15A of Ichinose
24 was modified to have a large diameter -- that the latch of Hamada would
25 engage the front-side portion of the first leg above the rear-side portion
26 having the large diameter, as claimed by applicant, rather than the rear-side
27 portion. And of course, the claim is limited to the rotation plane of the latch
28 being above the thickened portion of the leg. Hamada teaches only a latch
29 engaging a leg of a striker which is perpendicular to the base of the striker
30 and has the same diameter from end to end.

31 That's primarily our position on the case. We believe it's clear that
32 Mark never intended that the end of the thickening portion on its legs would
33 serve as a point to connect the latch. And the patent itself clearly indicates
34 only that the engaging portion is the parallel portion of the striker to the
35 base.

1 In our view, the examiner has used applicant's disclosure to reach the
2 conclusion that he's reached because there's nothing in these patents that gets
3 you to the result and the location of the striker as it relates to the two
4 different diameters. And indeed, as I already indicated, in Mark the latch
5 doesn't even hit the legs; it hits the crossbar.

6 If you have any questions, I'd be pleased to respond.

7 JUDGE FISCHETTI: My question that I have is Hamada, according
8 to the examiner, is provided to teach that it is well known to have the latch
9 member having legs that engage the part of the striker. That's all that is
10 being used for, is the hole through the plate. So your commentary as to
11 where the latch strikes really should be directed to Ichinose; which, and
12 according to what I see, does show that a latch is connecting at one of the
13 two depending portions of the U-connector.

14 MR. LATKER: Well, but Hamada doesn't teach the thickening of the
15 leg. And once you thicken the Hamada leg, then the question becomes:
16 Where are you going to locate the striker? To strike the thickened portion,
17 or to strike the portion that has a smaller diameter? There's no teaching of
18 that anywhere.

19 JUDGE FISCHETTI: My point is that it's the base reference Ichinose
20 that is being modified, and it's Hamada that is being used just as a teaching
21 reference to show that -- As a matter of fact, the examiner even gives almost
22 an official notice for the same thing that Hamada is being used for. My
23 point is, the argument should have been directed to Ichinose, the
24 modifications that you're saying.

25 MR. LATKER: I think what I was trying to do in this response was
26 indicate that we don't see much difference between Ichinose or Hamada.
27 They both show strikers, and we're willing to concede that the striker hits
28 one of the parallel legs. We're not arguing that point at all, if that's what
29 you're saying.

30 JUDGE FISCHETTI: I wanted to just clear the argument --

31 MR. LATKER: We don't care which of the two patents he uses as his
32 base reference.

33 JUDGE FISCHETTI: Well, I think we should follow what the
34 examiner has laid out for us.

35 MR. LATKER: Pardon?

1 JUDGE FISCHETTI: We have to follow what the examiner has laid
2 out for us.

3 MR. LATKER: Okay. Well, if I misspoke in here -- I indicated that
4 both of them, from our point of view, were identical, and you can modify
5 either one of them; which I think is responsive to the examiner's argument.
6 We're just not making any distinction between the two strikers.

7 I would point out, we think that the examiner's reply brief and the
8 final rejection never responded to our argument about the location of the
9 rotation plane. You can't find that. He never responded to the argument. In
10 fact, what I read to you basically went back to the original brief in which we
11 pointed out that there's no teaching of the location of the plane of rotation of
12 the latch in any of his arguments. He just says, "It's obvious -- You know,
13 after I have decided to thicken a portion of it and create a thinner portion
14 above it, the rest is obvious." We don't think it's obvious, especially when
15 you look at Mark. Mark locates the latch in a totally different way.

16 JUDGE PATE: I think the examiner was saying that you're
17 individually attacking the references, though. Everything you attack is
18 Mark. Well, Mark is noted cited for 102. Mark is cited to teach that you can
19 thicken the base legs of the U-shaped member. The other references teach
20 about the latch.

21 MR. LATKER: I'm sorry, I don't follow your question.

22 JUDGE PATE: I don't really have a question. One other thing I
23 wanted to ask you about was about the recent federal circuit case in Dystar,
24 where they said, "For example, because it is stronger, cheaper, cleaner,
25 faster, lighter, smaller, more durable, or more efficient --" The first one they
26 mentioned is "stronger." It looks like to me that if you took Ichinose and
27 said, "We need to make the legs stronger," you would thicken them, even
28 without the reference to Mark.

29 MR. LATKER: Well, again, that leaves you with the second
30 argument that we go back to. Even indicating that that case provides for the
31 thickening, he still hasn't located the latch in the position that it's claimed.

32 JUDGE PATE: Okay. I understand your argument. Thank you, Mr.
33 Latker. We don't have any more arguments, and we're going to take this
34 case under advisement.

35 MR. LATKER: Right. Thank you.

- 1 JUDGE PATE: Do you have a business card for the court reporter?
2 A business card?
3 MR. LATKER: No. Sorry.
4 JUDGE FISCHETTI: We'll make sure she gets the right spelling of
5 your name.
6 JUDGE PATE: Okay.
7 MR. LATKER: Thank you.
8 JUDGE PATE: Surely.
9 (Whereupon, at 1:13 p.m., the hearing was concluded.)